

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. C-02-216
	§	
ALFRED NMI BOURGEOIS	§	

ORDER


On August 28, 2008, the Court held a telephone conference in the above-styled motion.

At the conference, the Court made the following orders:

1. The Court **GRANTS** the United States' "Motion Seeking Order for Affidavit from Defense Counsel to Enable Respondent to Adequately Respond to Petitioner's Section 2255 Motion." (Docket Entry No. 435). Courts have uniformly held that an ineffective-assistance claim waives attorney/client privilege, at least within the scope of the issues raised by the claim. *See In re Lott*, 424 F.3d 446, 453 (6th Cir. 2005); *Johnson v. Alabama*, 256 F.3d 1156, 1178 (11th Cir. 2001); *Bittaker v. Woodford*, 331 F.3d 715, 718-19 (9th Cir. 2003); *Crutchfield v. Wainwright*, 803 F.2d 1103, 1121 (11th Cir. 1986); *United States Ballard*, 779 F.2d 287, 292 (5th Cir. 1986); *United States v. Woodall*, 438 F.2d 1317, 1326 (5th Cir. 1971). The inquiry required by *Strickland v. Washington*, 466 U.S. 668, 69 (1984) presupposes that Mr. Douglas Tinker and Mr. John Gilmore will be able to respond to the accusations of ineffective assistance both at trial and on appeal. The Court will consider any future argument that the responses of either attorney overstep the bounds of the attorney/client privilege waived by Bourgeois.

2. The Court **ORDERS** Mr. Tinker and Mr. Gilmore to respond to the allegations of ineffective assistance to the best of their ability. Mr. Gilmore will prepare an affidavit on or before September 12, 2008. It has come to the attention of the Court that, in the event of a hearing in this case, it may be necessary to preserve the testimony of Mr. Tinker. The parties have agreed that the most efficient way to do so is through written questions. The United States will prepare the first set of questions for Mr. Tinker by September 5, 2008. Mr. Tinker's responses to the questions will be filed with the Court. Mr. Gilmore will file a written notice with the Court if Mr. Tinker cannot complete his answers by September 22, 2008. Bourgeois will submit any further questions for Mr. Tinker within ten days after the initial responses are filed with the Court.
3. The Court **ORDERS** the United States of America's to respond to Bourgeois' motion for relief pursuant to 28 U.S.C. § 2255 or in the alternative 28 U.S.C. § 2241 on or before October 15, 2008.

SIGNED and ORDERED this 28th day of August, 2008.


Janis Graham Jack
United States District Judge